



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

APR 16 2007

Thomas J. Spulak, Esq.
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006-4706

RE: MUR 5789
Bacardi U.S.A., Inc.
Bacardi U.S.A., Inc. PAC and Robert
Higdon, in his official capacity as treasurer

Dear Mr. Spulak:

On August 14 and October 25, 2006, the Federal Election Commission notified your clients, Bacardi U.S.A., Inc. ("Bacardi") and Bacardi U.S.A., Inc. PAC and Robert Higdon, in his official capacity as treasurer ("Bacardi PAC"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 3, 2007, the Commission found, on the basis of the information in the complaint, your response, and other information that there is no reason to believe Bacardi violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f) by using a list of corporate vendors in connection with certain fundraisers, or that Bacardi PAC violated the Act. The Commission also voted to dismiss the allegation that Bacardi violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f) by failing to obtain pre-payment from Bacardi PAC for catering expenses. Nevertheless, based on the facts and circumstances of the matter, the Commission admonishes Bacardi to ensure that it obtains pre-payment of catering expenses for future Bacardi PAC fundraising events.

The file in this matter is now closed. Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Julie McConnell, the attorney assigned to this matter, at (202) 694-1650.

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Sincerely,

Thomasenia P. Duncan
Acting General Counsel



BY: Rhonda J. Vosdingh
Associate General Counsel for Enforcement

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR 5789

Respondents: Bacardi U.S.A., Inc.
Bacardi U.S.A., Inc. PAC and Robert Higdon, in his official capacity as treasurer

I. INTRODUCTION

The complaint alleges that Bacardi USA, Inc. ("Bacardi") violated the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with fundraisers held to benefit Martinez for Senate and Bill Nelson for U.S. Senate in 2004 and 2005, respectively. Specifically, the complaint alleges that Bacardi facilitated the making of contributions by failing to obtain pre-payment from Bacardi USA, Inc. PAC ("Bacardi PAC") for \$473.28 in catering expenses incurred during the Martinez fundraiser and by using a list of corporate vendors to distribute invitations to the Martinez and Nelson fundraisers. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(d), (f). For the reasons discussed below, the Commission dismisses the allegation that Bacardi violated the Act and issues an admonishment on the basis that the alleged failure to obtain pre-payment of catering expenses involves a *de minimus* amount, finds no reason to believe that Bacardi PAC and Robert Higdon, in his official capacity as treasurer, violated the Act, and finds no reason to believe that Bacardi violated the Act by facilitating the making of contributions by using a corporate list of vendors.

II. FACTUAL AND LEGAL ANALYSIS

A. THE MARTINEZ FUNDRAISER

On May 11, 2004, Bacardi PAC held a fundraising event for Martinez for Senate, the authorized committee of Mel Martinez, a U.S. Senate candidate in Florida in 2004, at Bacardi's corporate headquarters in Miami, Florida. *See* Compl. at ¶ 5; Bacardi Resp. at 2. As the result of

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1 this fundraiser, the complaint alleges that Bacardi impermissibly facilitated the making of
2 contributions by (1) failing to obtain pre-payment from Bacardi PAC for \$473.28 in food and
3 liquor provided by in-house catering staff, instead receiving reimbursement for these expenses
4 on June 16, 2004; and (2) using a corporate list of vendors, including a law firm and two public
5 relations firms, to distribute invitations to the Martinez fundraiser, resulting in at least \$7,450 in
6 contributions to Martinez for Senate from employees of those vendors. *See* Amended Compl. at
7 ¶ 8 and Exh. 5.

8 According to Bacardi, Bacardi PAC held the Martinez fundraiser in a meeting room that
9 the company regularly makes available at no charge to civic, educational and other organizations
10 and served limited refreshments, including distilled spirits, beverages, and hors d'oeuvres
11 provided by Bacardi's in-house catering services. *See* Bacardi Resp. at 2-3. Bacardi asserts that
12 two employees who volunteered their time to the Martinez campaign planned the fundraiser and
13 extended no more than 25 invitations to personal and business contacts, some of whom may have
14 forwarded the invitation to their own friends, colleagues, and contacts. *See id.* at 2; *see also*
15 Affidavit of Frederick J. Wilson III ("Wilson Aff.") at ¶ 5. As a result of the fundraiser,
16 Martinez collected a total of \$23,000 in contributions ranging in amount from \$50 to \$2,000.
17 *See* Bacardi Resp. at 2.

18 Corporations are prohibited from using corporate resources or facilities to engage in
19 fundraising activities in connection with any federal election beyond certain limited exemptions
20 set forth in the Commission's regulations. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(f). For
21 example, a corporation may not provide catering or other food services in connection with
22 fundraising activities or use a corporate list of customers, clients, vendors or others outside the
23 restricted class to solicit contributions or distribute invitations to a fundraiser, unless it obtains

1 advance payment for the fair market value of the services or list. *See* 11 C.F.R.
2 § 114.2(f)(2)(i)(C), (E). By contrast, a corporation's separate segregated fund may make
3 contributions and expenditures in connection with federal elections subject to the Act's limits
4 and disclosure requirements, although it may not accept prohibited or excessive contributions.
5 *See* AO 1997-16 (ONRC Action) at 6; *see also* 11 C.F.R. § 114.2(d). In addition, stockholders
6 and employees of a corporation may make occasional, isolated or incidental use of corporate
7 facilities for individual volunteer activity in connection with federal elections and are not
8 required to reimburse the corporation unless their activities increase overhead or operating costs.
9 *See* 11 C.F.R. § 114.9(a).

10 Bacardi asserts that Bacardi PAC underwrote all of the expenses associated with the
11 Martinez fundraiser. Bacardi admits, however, that it failed to obtain pre-payment from Bacardi
12 PAC for catering expenses totaling \$473.28 for in-house inventory and catering staff.
13 Attributing this error to a "misunderstanding," Bacardi states that Bacardi PAC reimbursed it for
14 the expenses on June 16, 2004, reported the amount as an in-kind contribution to Martinez for
15 Senate, and disclosed what happened in an e-text attachment to its 2004 July Quarterly Report.
16 *See* Bacardi Resp. at 2; *see also* Compl. at Exh. 1. Bacardi also asserts that, since this error, it
17 and its PAC have taken steps to ensure future compliance, including consulting with outside
18 counsel prior to engaging in fundraising events.

19 Bacardi denies that it used a list of corporate vendors for the Martinez fundraising event.
20 In an affidavit, Frederick J. Wilson III, the Senior Vice President and General Counsel, states
21 that the company does not maintain a list of corporate vendors and, as discussed above, that two
22 employees acting as volunteers organized the fundraising events and invited personal and
23 business contacts to the fundraiser. *See* Wilson Aff. at ¶¶ 5-6. Although the response does not

1 identify the volunteers, include affidavits from them, or provide additional information
2 concerning the scope of their fundraising activities, it appears sufficient to refute the allegations
3 that Bacardi facilitated contributions by using a list of corporate vendors for the fundraiser
4 because the complaint was conclusory and offered no information supporting this speculative
5 allegation.¹

6 Accordingly, the Commission dismisses the allegation that Bacardi violated 2 U.S.C.
7 § 441b and 11 C.F.R. § 114.2(f) by failing to obtain pre-payment for catering expenses and
8 issues an admonishment on the basis that the violation involves a *de minimus* amount and that
9 Bacardi PAC promptly remedied and disclosed the error and has implemented measures to
10 ensure future compliance. The Commission also finds no reason to believe that Bacardi PAC
11 and Robert Higdon, in his official capacity as treasurer, violated the Act, and finds no reason to
12 believe that Bacardi violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2(f) by using a list of
13 corporate vendors for the Martinez fundraiser.

14 **B. THE NELSON FUNDRAISER**

15 On September 30, 2005, Bacardi PAC held a fundraiser for Bill Nelson for U.S. Senate.
16 See Amended Compl. at ¶ 11. As with the Martinez fundraiser, the complaint asserts that
17 Bacardi used a corporate list of vendors, including a law firm and a lobbying firm, to distribute
18 invitations to the fundraiser and solicit contributions from employees of those vendors. The
19 complaint speculates that Bacardi must have used the same list of vendors to solicit funds for the

¹ In addition, because the complaint does not allege that Bacardi expected, ordered, or coerced its employees to plan fundraisers, and the available information does not suggest that this was the case, there is no reasonable basis to investigate whether Bacardi engaged in corporate facilitation in this manner or through other means. See 11 C.F.R. §§ 114.2(f), 114.9(a)

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1 Nelson campaign, as ten individuals who contributed to Martinez for Senate also made
2 contributions to Bill Nelson for U.S. Senate.²

3 Bacardi's response to this allegation is virtually identical to its explanation for the
4 Martinez fundraiser. In an affidavit, Bacardi denies that it maintained a list of corporate vendors
5 or used such a list to distribute invitations to the Nelson fundraiser. *See* Wilson Aff. at ¶¶ 5-6.
6 According to Bacardi, as with the Martinez fundraiser, two employees volunteered their time to
7 Bill Nelson for U.S. Senate, planned the Nelson fundraiser, and extended invitations to their
8 personal and business contacts, some of whom may have forwarded the invitation to their own
9 friends, colleagues and contacts.³ *See* Bacardi Resp. to Amended Compl. at 2; *see also* Wilson
10 Aff. at ¶ 5.

11 Accordingly, the Commission finds no reason to believe that Bacardi violated 2 U.S.C.
12 § 441b and 11 C.F.R. § 114.2(f) by using a list of corporate vendors for the Nelson fundraiser.

² Of the ten allegedly common contributors identified in the complaint, four are employees of Bacardi, Bacardi USA, or Bacardi N A , rather than employees of vendors *See* Amended Compl at ¶ 13.

³ Again, Bacardi does not identify the volunteers, produce affidavits from them, or provide information concerning their role within the company or the scope of their fundraising activities.